

REMARKS/ARGUMENTS

The outstanding Office Action sets forth a new grounds of rejection and pages of additional new arguments. Certainly, the Applicant has shown a willingness to appeal the Examiner's prior rejections but, given the new rejection and additional, unsolicited comments on the prior art rejections made in the Office Action, the Applicant has chosen to re-open the prosecution to address the new grounds and to make some minor amendments to the claims in the hopes of clearly obviating many of the Examiner's rejections.

With respect to the new grounds of rejection of claims 15-20 under the second paragraph of 35 USC 112, the Applicant submits that the Examiner, as well as all others involved in connection with the two separate conferences that necessarily took place in connection with the appeals taken in this application, actually had this right the first time, i.e., no indefiniteness of the claims exists. Certainly, the Applicant concedes that claim 15 contains means-plus-function language drafted under 112 6th paragraph. In addition, the Applicant understands the Examiner's reversal in position based on the prodding by the Board of Appeals, although the Board appeared to have had their own reservations about the matter, as discussed further below, as they certainly could have introduced their own grounds of rejection if deemed appropriate. Regardless, it is submitted that the case law is being misinterpreted in its application to the present situation.

First of all, the Board specifically referred the Examiner to the John Love September 2, 2008 memo on this matter. That memo outlined an appropriate § 112 second paragraph rejection when computer implemented means-plus-function claim limitations require an algorithm to perform the function, but no algorithm is disclosed in the specification. The memo and related court cases clearly state that an explanation of appropriate programming or providing some detail about the means to accomplish the function can be used to satisfy the requirements of § 112 second paragraph. In any case, the memo and the Office Action rely on the *Aristocrat Technologies* and *WMS Gaming*

cases for support such that the perceived, clear distinctions with the present situation will be discussed below.

The 2008 CAFC decision in *Aristocrat Technologies*, dealing with controlling images on a slot machine's video screen, paying a prize when a predetermined combination of symbols comes up and defining the pay lines for various games through the use of mathematical computations, upheld a district court ruling that there was no adequately disclosed "step-by-step process for performing the claimed functions..." under the "control means." The relevant invention was quite complicated in that a wide range of possible symbol combinations could come up on the slot machine, some of the combinations would have to be correlated to certain prizes and different possible pay line scenarios existed. The Applicant simply omitted the details from the specification and attempted to argue reference to a general purpose, programmable microprocessor was sufficient disclosure. In this case, the Court held that an algorithm would be needed in connection with programming the microprocessor, i.e., a general purpose computer could not perform these detailed functions without special programming. Therefore, without any disclosure on how the microprocessor would be used to achieve the elaborate functions claimed, a § 112 2nd paragraph rejection was upheld. In *WMS Gaming*, the CAFC actually held that the steps disclosed by the Applicant did provide the necessary disclosure so that, even though the specification did not detail programs provided to perform the claimed gaming functions, the method steps to be taken were set forth and relied upon by the Court in construing the claims.

In the present application, there is no elaborate series of functions which need to be interpreted and there is no need to set forth a detailed program on how to enlarge the screen while adding additional information. The specification already sets forth that there is too much data in the first and second sets of information to enable both sets to be presented in the limited size associated with one of the screen zones (see paragraph 0021). Instead, the actual zone size is only large enough to display codes as the first set of information. When the selected zone is enlarged, the additional data is visible. Certainly, there exist numerous details on the size and type of display and an interactive

control system in a prior U.S. patent is incorporated by reference. In addition, the original disclosure clearly states the first and second sets of information are preferably maintained in hierarchical form (see paragraph 0022) such that the sets of information are there, but only the first set is visible in the small zone. Actually, the specification goes on to more particularly specify that all the information is present, but displayed in a compressed form to show only the first set of information when the display space is limited, but expanded to also show the second set of information on the enlarged screen. There is no algorithm necessary for such a one-step operation. Instead, it is respectfully submitted that the disclosure of either the hierarchical arrangement or the compressed/expanded form fulfills the disclosure requirements for § 112 2nd paragraph. It is considered that the Board recognized that not all computer related means-plus-function limitations require a specific algorithm to be disclosed in the specification, otherwise the case would not have been sent back for further consideration by the Examiner. Regardless, it is hopeful that the Examiner would see that the subject means-plus-function limitation of claim 15 requires no more than a step of, for example, if zone X containing information A is selected, enlarge screen to depict information A and information B. This control flow is clearly shown in Figure 2B which should satisfy the definiteness requirement.

By the way, the Examiner should be aware of the manner in which the relied upon *Aristocrat Tech.* and *WMS Gaming* cases are being applied by the courts. For instance, in *Stanacard, LLC v Rebtel Networks*, 680 F. Supp. 2nd 483, U.S. Dist. 2010, the *Aristocrat Tech.* and *WMS Gaming* cases were specifically relied upon in holding that “not every patent that utilizes computer processing power must disclose all the algorithms utilized. Courts have held that a specific algorithm need not be disclosed to avoid indefiniteness where the function in question would be readily apparent to a person of skill in the art” (citing *Aristocrat Tech.*) and “*WMS Gaming* does not require that a particular algorithm be identified if the selection of the algorithm or group of algorithms needed to perform the function in question would be readily apparent to a person of skill in the art.” (also citing *Med Instrumentation*, 344 F.3d at 1214). “The law is clear that patent documents need not include subject matter that is known in the field of the invention and is in the

prior art, for patents are written for persons experienced in the field of the invention” citing *SPX Corp v. Bartec USA, LLC*, 557 F.Supp. 2d 810, 819-20 (E.D. Mich 2008) and referencing “extent of algorithm requirement determined by knowledge of ordinary skilled artisan.” Hopefully what the Examiner will get out of all this is that there is actually no requirement for a specific algorithm and the description of the steps to be taken to achieve the function can satisfy the requirements for definiteness. Actually, in John Love’s memo itself, it is stated that the description of the structure can be adequately described in any understandable terms including “in prose, in a flow chart or in any other manner that provides sufficient structure.” Based on the above, reconsideration and withdrawal of this formal rejection is respectfully requested.

As for the rejection of the claims versus the prior art, the Applicant does not see a need to reiterate all the arguments previously made in connection with the lengthy prosecution and the two appeals taken in this application. However, some overall comments are seen as appropriate to highlight the changes made to the claims and address newly added points presented by the Examiner. With respect to the claim changes, the Applicant has decided to clearly obviate at least the majority of the Examiner’s rejections for any next appeal to the Board of Appeals. More specifically, the claims have been amended to more particularly define what is encompassed by the term “appliance” based on the original disclosure. Even though the Applicant still believes that at least the copier machine of Kimoto and the home automation controller of Launey are not “appliances” in accordance with the invention, perhaps these changes will be favorably viewed. The product claims are now all directed to the combination of an appliance with the display arrangement. Finally, independent claim 8 includes further limitations regarding when the selected zone would be enlarged in connection with the invention. Basically, these changes have been made in the hopes the Examiner will be willing to work with the Applicant in arriving at allowable subject matter. Regardless, the claims have been amended to clarify the scope such that withdrawal of these references as “anticipating” the invention is submitted to be appropriate.

In connection with the additional remarks made by the Examiner in the new Office Action, it is believed that many of them are moot in view of the amendments to the claims. Still, some brief comments will be provided. For claims which the Applicant chose to group with other claims for purposes of the prior appeal, it is respectfully submitted as inappropriate to refer to these claims as “not clearly argued...” Certainly, each and every limitation of the claims must be addressed in the next Office Action, regardless of whether the Applicant previously chose not to separately argue particular claims. With Kimoto, please note that the Office Action first identified the “LENS MODE 21” as the first set of information (page 15) and then later referred to the “help ?” as this information (page 16). If Kimoto is still going to be relied upon, clarification of the Examiner’s position would be needed. On page 17, the reference to a “design choice” is seen to be misplaced as the Examiner is setting forth an “anticipatory” rejection. When reconsidering the application, it is requested that the Examiner pay careful attention to the fact that the invention is best set forth in connection with Figure 2B of the application. The Examiner continues to refer to Figure 2A which makes the Applicant believe that the point of the invention is not being understood (see, for example, the latest Office Action on page 14, line 19).

Again the Applicant would like to point out that any art considered to anticipate the invention must at least teach providing both the first set of information from the initial screen **and** a second set of information in an enlarged screen. The present invention does not cover submenus as set forth in the various prior art patents relied upon by the Examiner. Instead, the present invention allows a **first set of information** to become enlarged and **joined by a second set of information** representing additional **details concerning the first set of information**, such that both sets of information substantially, entirely encompass the screen. In this way, for example, if the user has experience interpreting diagnostic codes, then no further information on the data is required. However, if the user is not experienced in the interpretation of the diagnostic codes, an additional selection can be made causing zone 18 to enlarge so as to substantially, entirely encompass the screen as represented by screen 300 in Figure 2B.

Absolutely none of the prior art of record is concerned with the problem or solution of the present invention.

Based on at least the above remarks and the current amendments to the claims, the Applicant respectfully submits that the present invention is patentably defined over the prior art of record such that allowance of all claims and passage of the application to issue are respectfully requested. Again, if the Examiner does not fully agree that the application is ready for allowance, given the elongated prosecution of this application, the Examiner is requested to contact the undersigned at the number provided below in set up an interview in the hopes of furthering the prosecution.

Respectfully submitted,



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